

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
WACO DIVISION**

**UNITED STATES OF AMERICA**

**v.**

**LUIS HERVEY LOZANO-DUARTE**

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**CRIMINAL NO. 6:19-CR-244-ADA**

**REPORT AND RECOMMENDATION  
OF THE UNITED STATES MAGISTRATE JUDGE**

TO: THE HONORABLE ALAN D ALBRIGHT,  
UNITED STATES DISTRICT JUDGE

The undersigned submits this Report and Recommendation to the district judge pursuant to 28 U.S.C. § 636(b) and Rule 1 of Appendix C of the Local Court Rules of the United States District Court for the Western District of Texas, Local Rules for the Assignment of Duties to United States Magistrate Judges. Before the Court is the petition of the United States Probation Office recommending the revocation of the Defendant's term of supervision. The district judge referred the matter to the undersigned for the preparation of a report and recommendation.

**I. PROCEDURAL BACKGROUND**

The Defendant was convicted of Possession with Intent to Distribute at Least 100 Grams of Heroin, a Scheduled I Controlled Substance, in violation of 21 U.S.C. §§ 841(a)(1) and (b)(1)(B)(i). The Defendant was sentenced a term of imprisonment of "Time Served," followed by a five (5) year term of supervised release was imposed by the Court. Defendant was released to supervision on June 23, 2020.

On November 21, 2024, the United States Probation Office filed a Petition for Warrant or Summons for Offender Under Supervision alleging that the Defendant violated the terms of his

supervision in the following ways:

**Violation Number 1:** Mandatory Condition Number 1, the defendant shall not commit another federal, state, or local crime during the term of supervision.

**Violation Number 2:** Mandatory Condition Number 2, the defendant shall not unlawfully possess a controlled substance.

**Violation Number 3:** Mandatory Condition Number 3, the defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of release on probation or supervised release and at least two periodic drug tests thereafter (as determined by the court), but the condition stated in this paragraph may be ameliorated or suspended by the court if the defendant's presentence report or other reliable sentencing information indicates low risk of future substance abuse by the defendant.

**Violation Number 4:** Standard Condition Number 17, if the defendant is excluded, deported, or removed upon release on probation or supervised release, the term of supervision shall be a non-reporting term of probation or supervised release. The defendant shall not illegally re-enter the United States. If the defendant is released from confinement or not deported, or lawfully re-enters the United States during the term of probation or supervised release, the defendant shall immediately report in person to the nearest U.S. probation Office.

On May 27, 2025, the Court held a hearing on the petition. At that hearing, the Defendant plead NO CONTEST as to violation numbers 1, 2, 3, and 4. The petition contained a sufficient factual basis to support a plea of NO CONTEST as to all violations.

## **II. FINDINGS OF THE COURT**

Based on the sworn statements of Defendant and other testimony at the hearing, the undersigned finds as follows:

1. The Defendant violated the conditions of his supervision as alleged in the petition.
2. The Defendant was competent to make the decision to enter a plea of NO CONTEST as to the allegations underlying violations 1, 2, 3, and 4.
3. The Defendant had both a factual and rational understanding of the proceedings against him.

4. The Defendant did not suffer from any physical or mental impairment that would affect his ability to fully understand the charges against him or the consequences of his plea.
5. The Defendant was not under the influence of any drugs, alcohol, or medication that would affect his judgment in entering a plea or that would affect his understanding of the basis, consequences, or effect of his plea.
6. The Defendant was sane and mentally competent to stand trial for these proceedings.
7. The Defendant was sane and mentally competent to assist his attorney in the preparation and conduct of his defense.
8. The Defendant received a copy of the petition naming him, and he either read it or had it read to him.
9. The Defendant understood the petition and the charges alleged against him.
10. The Defendant had a sufficient opportunity to discuss the petition and charges with his attorney.
11. The Defendant was satisfied with the job his attorney has done and had no complaints about his attorney.
12. The Defendant understood that he had the right to plead NOT TRUE and proceed with a hearing at which he could present evidence and cross-examine witnesses.
13. The Defendant freely, intelligently, and voluntarily entered his plea of NO CONTEST.
14. The Defendant understood his statutory and constitutional rights and desired to waive them.
15. The petition contains a sufficient factual basis to support the Defendant's plea of NO CONTEST as to violation numbers 1, 2, 3, and 4.

### **III. RECOMMENDATION**

The undersigned has carefully considered all the arguments and evidence presented by the parties and **RECOMMENDS** that the Defendant's term of supervised release be revoked and that the Defendant be sentenced to seven (7) months imprisonment with no term of supervised release to follow and that he be given credit for the time he has been in federal custody.

### **IV. WARNINGS**

The parties may file objections to this Report and Recommendation. A party filing objections must specifically identify those findings or recommendations to which objections are being made. The district court need not consider frivolous, conclusive, or general objections. *See Battles v. United States Parole Comm'n*, 834 F.2d 419, 421 (5th Cir. 1987).

A party's failure to file written objections to the proposed findings and recommendations contained in this Report within fourteen (14) days after the party is served with a copy of the Report shall bar that party from de novo review by the district judge of the proposed findings and recommendations in the Report and, except upon grounds of plain error, shall bar the party from appellate review of unobjected-to proposed factual findings and legal conclusions accepted by the district judge. *See* 28 U.S.C. 636(b)(1)(C); *Thomas v. Arn*, 474 U.S. 140, 150-53 (1985); *Douglass v. United Services Automobile Association*, 79 F.3d 1415, 1428-29 (5th Cir. 1996) (en banc).

SIGNED this 28<sup>th</sup> day of May, 2025.

  
DEREK T. GILLILAND  
UNITED STATES MAGISTRATE JUDGE